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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

MGE/146375

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 07, 2013, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on February 12, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied petitioner's January 7, 2013 application for MA because petitioner is not a qualifying immigrant.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

By: [REDACTED], petitioner's son-in-law

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Katherine May  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 7, 2013 petitioner applied for MA.
3. On January 8, 2013 the agency issued a notice of decision to petitioner stating that the application was denied because petitioner was not a US citizen or a qualifying immigrant.

4. Petitioner's date of entry to the US is September 16, 2012.

### **DISCUSSION**

As a nonfinancial condition of full MA eligibility, including MA-Disability coverage, a person must be either a U.S. citizen or a lawfully admitted alien who falls into one of several precise categories. See, *Medicaid Eligibility Handbook*, §7.3.1, et. seq., available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>; and see, 8 U.S.C. 1613(a). The *Handbook* provides the following lengthy guidance with respect to alien eligibility:

#### **7.3.1 Immigrants Introduction**

Immigrants are persons who reside in the U.S., but are not U.S. citizens or nationals. The immigrants described below, who apply for Medicaid and meet all eligibility requirements, are entitled to receive Medicaid benefits.

1. A refugee admitted under Immigration & Nationality Act (INA) Section 207.

A refugee is a person who flees his/her country due to persecution or a well-founded fear of persecution because of race, religion, nationality, political opinion, or membership in a social group.

An immigrant admitted under this refugee status may be eligible for Medicaid even if his/her immigration status later changes.

2. An asylee admitted under INA Section 208.

Similar to a refugee, this is a person who seeks asylum and is already present in the U.S. when s/he requests permission to stay.

An immigrant admitted under this asylee status may be eligible for Medicaid even if his/her immigration status later changes.

3. An immigrant whose deportation is withheld under INA Section 243(h) and such status was granted prior to April 1, 1997, or an immigrant whose removal is withheld under INA Section 241(b)(3) on or after April 1, 1997.

An immigrant admitted under this status may be eligible for Medicaid even if his/her immigration status later changes.

4. A Cuban/Haitian entrant.

An immigrant admitted under this Cuban/Haitian entrant status may be eligible for Medicaid even if his/her immigration status later changes.

5. An American Indian born in Canada who is at least 50% American Indian by blood, or an American Indian born outside the U.S. who is a member of a Federally recognized Indian tribe.

6. Victims of a severe form of trafficking in accordance with 107(b)(1) of the Trafficking Victims Protection Act of 2000 (P.L. 106-386).

7. Lawfully admitted for permanent residence under the INA.
8. Paroled into the U.S. under INA Section 212(d)(5).
9. Granted conditional entry under immigration law in effect before April 1, 1980 [INA Section 203(a)(7)]
10. An immigrant who has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.
11. An immigrant whose child has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.
12. An immigrant child who resides with a parent who has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.

#### **7.3.1.1 Special Provisions for Immigrants in items 7-12**

**\*\*If these immigrants (from items 7-12) lawfully entered the U.S. on or after August 22, 1996, they must also be *one* of the following:**

- a. Lawfully residing in Wisconsin and an honorably discharged veteran of the U.S. Armed Forces, **or**
- b. Lawfully residing in Wisconsin and on active duty ( other than active duty for training ) in the U.S. Armed Forces, **or**
- c. Lawfully residing in Wisconsin and the spouse, unmarried dependent child, or surviving spouse of a person described in "a" or "b" **or**
- d. An Amerasian, **or**
- e. Resided in the U.S. for at least five years since his/her date of entry.

Beginning, October 1, 2009, children under the age of 19 and pregnant women who are either:

1. Lawfully Admitted for Permanent Residence (CARES TCTZ Code #1 in the Immigration Status Chart below),
2. Lawfully present under Section 203(a)(7) (Code #3 in the Immigration Status Chart below),
3. Lawfully present under Section 212(d)(5) (Code #6 in the Immigration Status Chart below), **or**
4. Who suffer from domestic abuse and are considered to be a battered immigrant (Code #16 in the Immigration Status Chart below),

no longer have to wait 5 years to be eligible for full benefit Medicaid and BadgerCare Plus. This policy applies to both persons in existing open cases and new applicants. Women have the 5-year ban lifted when their pregnancy is verified and continues for an additional 60 days after the last day of pregnancy and through the end of the month in which the 60th day occurs.

Immigrants, who do not appear in the lists above, who apply for Medicaid and meet all eligibility requirements except for citizenship are entitled to receive Medicaid Emergency Services only (See the BC+ Handbook).

Pregnant immigrants who do not appear in the list above, who apply for the BadgerCare Plus Prenatal Program (BC+PP) (See the BC+ Handbook) and who meet the eligibility requirements except for citizenship are entitled to receive those benefits.

Immigration status is an individual eligibility requirement. It does not affect the eligibility of the Medicaid Group. The citizen spouse or child of an ineligible immigrant may still be eligible even though the immigrant is not.

Verify immigration status using the procedures in the SAVE Manual.

### **7.3.2 Public Charge**

The receipt of Medicaid by an undocumented, non-qualifying, or qualifying immigrant or by the children or spouse for whom the individual is legally responsible does not establish the person as a public charge.

Undocumented, non-qualifying, or qualifying immigrants are considered to be a public charge if while receiving Medicaid, s/he is in a medical institution for more than the length of a rehabilitative stay.

Undocumented, non-qualifying, or qualifying immigrants concerned about being considered a "public charge", should be directed to contact the INS field office to seek clarification of the difference between rehabilitative and other types of institutional stays.

### **7.3.3 INS Reporting**

Do not refer an immigrant to Immigration and Naturalization Service (INS) unless information for administering the Medicaid program is needed. For example, if Medicaid needs to determine an individual's location for repayment or fraud prosecution, or to determine his/her immigration status.

### **7.3.4 Immigration Status Chart**

<b>CARES TCTZ Code</b>	<b>Alien Status</b>	<b>Arrived Before 08/22/96</b>	<b>Veteran*/ Amerasian Arrived before 8-22-96</b>	<b>Arrived on or after 8-22-96</b>	<b>Veteran*/ Amerasian Arrived on or after 8-22-96</b>	<b>Children under 19 and pregnant women</b>
01	Lawfully admitted for permanent residence	Eligible	Eligible	Ineligible for 5 years	Eligible	Eligible effective 10- 01-09
02	Permanent resident under color of law (PRUCOL)	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible
03	Lawfully present under Section 203(a)(7)	Eligible	Eligible	Ineligible for 5 years	Eligible	Eligible effective 10- 01-09
04	Lawfully present under Section 207(c)	Eligible	Eligible	Eligible	Eligible	Eligible
05	Lawfully present under Section 208	Eligible	Eligible	Eligible	Eligible	Eligible
06	Lawfully present under Section 212(d)(5)	Eligible	Eligible	Ineligible for 5 years	Ineligible for 5 years	Eligible effective 10- 01-09
07	IRCA (No longer valid)	N/A	N/A	N/A	N/A	N/A
08	Lawfully admitted -	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible

	temporary					
09	Undocumented Alien	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible
10	Illegal Alien	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible
11	Cuban/Haitian Entrant	Eligible	Eligible	Eligible	Eligible	Eligible
12	Permanent Resident	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible
13	Special agricultural worker under Section 210(A)	Ineligible	Ineligible	Ineligible	Ineligible	Eligible
14	Additional special agricultural worker under Section 210(A)	Ineligible	Ineligible	Ineligible	Ineligible	Eligible
15	Withheld deportation - Section 243(h)	Eligible	Eligible	Eligible	Eligible	Eligible
16	Battered Alien	Eligible	Eligible	Ineligible for 5 years	Ineligible for 5 years	Eligible effective 10-01-09
17	Amerasian	Eligible	Eligible	Eligible	Eligible	Eligible
18	Foreign-born American Indian	Eligible	Eligible	Eligible	Eligible	Eligible
19	Victims of Trafficking	Eligible	Eligible	Eligible	Eligible	Eligible
20	Lawfully Residing - to be used for all persons admitted under one of the Class of Admission Codes found in the table in section <u>7.4.4</u>	Ineligible	Ineligible	Ineligible	Ineligible	Eligible

\* "Veteran" includes certain veterans and active duty servicemen and women, their spouses, dependent children, or certain surviving spouses.

*Medicaid Eligibility Handbook*, §7.3.1, et. seq.

The only alternative for coverage is for services that can be considered emergency medical services. See, *Handbook*, §34.1; and see, 8 U.S.C. 1611(b)(1)(A). The *Medicaid Eligibility Handbook*, §34.1.1, defines emergency medical services as follows:

#### **34.1.1 Emergency Services Eligibility Introduction**

Documented and undocumented non-citizens ineligible under regular Medicaid due to alien status can be eligible for Emergency Services, if s/he meets all other eligibility requirements except having or applying for an SSN. Non-citizens may have an SSN and may still qualify for Emergency Services. If a non-citizen would otherwise be eligible for any type of EBD Medicaid, s/he would qualify for Emergency Services.

Emergency Services only covers medical services needed for the treatment of an emergency medical condition. Services related to organ transplant procedure are not covered by Emergency Services.

An emergency means a medical condition (including labor and delivery) that shows acute symptoms of sufficient severity (including severe pain) such that the lack of immediate Medicaid could result in one or more of the following:

1. Serious jeopardy to the patient's health.
2. Serious impairment to bodily functions.
3. Serious dysfunction of a bodily organ or part.

All labor and delivery services are emergency services and are covered under Emergency Services for eligible non-qualifying aliens.

The IM agency does not determine if an emergency condition is eligible for Emergency Services coverage.

The medical provider submits claims for emergency medical services to the fiscal agent. It determines if a condition is an emergency medical condition covered by Emergency Services.

A citizen is not eligible for Medicaid Emergency Services even when s/he cannot produce citizenship and/or identity verification.

The petitioner has not presented any evidence that would indicate that she meets any of the classes of defined qualified aliens. She is lawfully admitted as a permanent resident that arrived in the United States on September 16, 2012. She has not established that she is an asylee, refugee, or any other type of qualified alien. Accordingly, I can only conclude that she cannot be eligible for MA – Disability or any other type of full MA coverage until she has resided in the United States for at least 5 years after the date of entry. The agency action must be affirmed.

### **CONCLUSIONS OF LAW**

The agency correctly denied petitioner's January 7, 2013 application for MA because petitioner is not a qualifying immigrant.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

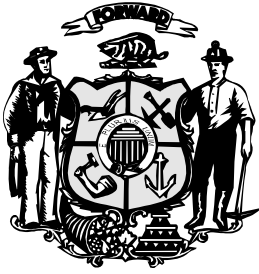
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 11th day of March, 2013

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 11, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability